

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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**MAY 14 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0005-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ARRON SHAWN BOSSARDET,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20034191

Honorable Clark W. Munger, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Lingeman and Bock  
By Richard C. Bock

Tucson  
Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, Arron Bossardet was convicted of first-degree murder, aggravated assault with a deadly weapon, and three counts of kidnapping. The trial court imposed a combination of concurrent and consecutive sentences totaling natural life plus 10.5 years. This court affirmed his convictions and sentences on appeal. *State v. Bossardet*, No. 2 CA-CR 2005-0254 (memorandum decision filed Oct. 18, 2006). Bossardet now challenges the trial court’s summary denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “A petition for post-conviction relief is addressed to the sound discretion of the trial court[,] and the decision of the court will not be reversed unless an abuse of discretion affirmatively appears.” *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). We accept review but deny relief.

¶2 As he did below, Bossardet raises numerous claims of ineffective assistance of trial counsel. The same judge who had presided over his trial found Bossardet had failed to present a colorable claim that counsel had performed deficiently in representing him or that counsel’s actions or inactions had caused Bossardet prejudice. The court summarily dismissed the petition.

¶3 Summary disposition of post-conviction claims is appropriate when a defendant presents no “material issue of fact or law which would entitle the defendant to relief” and “no purpose would be served by any further proceedings.” Ariz. R. Crim. P. 32.6(c). A colorable claim of ineffective assistance of counsel is “one that, if the allegations are true, might have changed the outcome” of the case. *State v. Runningeagle*, 176 Ariz. 59,

63, 859 P.2d 169, 173 (1993). “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim.” *Id.* A “strong presumption exists” that counsel provided effective assistance, and a defendant has the burden of overcoming that presumption. *Id.* ¶ 22.

¶4 We first address Bossardet’s claim that trial counsel performed ineffectively by failing to explain Bossardet’s right not to testify at trial. In his affidavit supporting his petition for post-conviction relief, Bossardet stated that he had “not want[ed] to testify” and had done so only at counsel’s “insistence,” but he did not clearly state that he would not have testified had counsel explained his rights further or differently. In fact, in his petition for review, he suggests his decision to testify would have been the same, even had he understood that the decision was “totally his rather than that of his attorney.”

¶5 Bossardet also claimed counsel had failed “to adequately review . . . phone calls,” evidence about which was introduced at trial. Specifically, Bossardet contends that a police detective incorrectly determined that a particular phone number belonged to one of the victims and that counsel failed to question the detective about it. But in his affidavit

below, Bossardet did not assert that the number in question was not, in fact, the victim's number.

¶6 Bossardet further claims that counsel had performed deficiently by failing to call character witnesses to testify on Bossardet's behalf at trial. It did, however, correctly deny relief on that claim. Although Bossardet claimed he had given defense counsel "a list of witnesses who could and would have testified about his character," Bossardet did not identify any specific witness, let alone establish that the witness would have testified or what that testimony might have been. Therefore, the trial court properly concluded that he presented no colorable claim that counsel's failure to call witnesses was either deficient performance or prejudicial to his defense.

¶7 Next, arguing that an act cannot be both impulsive and premeditated, Bossardet claimed that his 2007 diagnosis of post-traumatic stress disorder (PTSD) constituted newly discovered evidence relevant to the jury's determination of whether he had premeditated the murder. To state a colorable claim of newly discovered evidence, a defendant must show not only that evidence was discovered after trial despite diligent efforts, the evidence must also have existed at the time of trial, must be relevant, and "must be such that it would likely have altered the verdict, finding, or sentence if known at the time of trial." *State v. Bilke*, 162 Ariz. 51, 52-53, 781 P.2d 28, 29-30 (1989). As the trial court noted, nothing in the psychologist's report submitted in support of this claim indicated Bossardet had been suffering from PTSD either at the time of trial or when he committed the murder. Thus,

Bossardet presented no evidence that his newly diagnosed condition had been a causative factor in the commission of his crimes. *See id.* Indeed, the report also stated that Bossardet did not appear to be “behaviorally impulsive.” Therefore, the trial court did not abuse its discretion by summarily dismissing Bossardet’s claim of newly discovered evidence.

¶8 The trial court addressed Bossardet’s other claims of ineffectiveness point by point, thoroughly explaining its reasoning. Because the court ruled correctly on the remaining issues and we see no purpose in rehashing its order denying relief on these claims, we adopt the court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Accordingly, although we grant review, we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge